national RIGHT TO LIFE committee, inc.

Suite 500, 419 7th Street, N.W.
Washington, D.C. 20004-2293 — (202) 626-8800 FAX 737-8189 or 347-590

(202) 626-8820

6/21/95

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PARTIAL-BIRTH ABORTIONS: MISINFORMATION AND REBUTTAL

Over the past several weeks, pro-abortion advocacy groups such as the National Abortion Federation and NARAL have disseminated a litany of misinformation regarding the partial-birth abortion procedure and the Partial-Birth Abortion Ban Act (HR 1833, S. 939). Some journalists have uncritically reported some of these claims as fact. This memo summarizes some of this misinformation and provides rebuttal documentation.

MISINFORMATION: THE BILL AFFECTS ONLY "THIRD-TRIMESTER" ABORTIONS"

MISINFORMATION: *Los Angeles Times*, June 16: "The procedure [banned by Rep. Canady's bill] makes up only 0.04% of all abortions performed after 24 weeks of gestation, or about 200 a year."

CRITIQUE: This statement incorrectly conveys that the Partial-Birth Abortion Ban Act would ban use of the procedure after 24 weeks. In fact, the partial-birth method is generally used starting at 20 weeks (four and one-half months, or halfway through the second trimester)-- and the bill bans use of the method at any stage of development. As Congressman Canady pointed out in his statement opening a June 15 hearing before the House Judiciary Constitution Subcommittee:

> Some press accounts have already erroneously reported that this is a bill to, quote, "ban third-trimester abortion," unquote. That is incorrect. The bill is addressed to a particular class of abortion procedures... This bill would prohibit the deliberate killing of a baby who has already been partly delivered into the birth canal, whatever the gestational age.

MISINFORMATION: THERE ARE "ONLY" 200 SUCH ABORTIONS A YEAR

MISINFORMATION: *Los Angeles Times*, June 16: "The procedure [banned by Rep. Canady's bill] makes up only 0.04% of all abortions performed after 24 weeks of gestation, or about 200 a year."

CRITIQUE: **With respect to the bill, the pertinent question is not how many *third-trimester* abortions there are, but how many *partial-birth* abortions there are-- whether they are performed in the second trimester or the third trimester** One of the most complete reports on the procedure appeared in the June 5, 1993 edition of *American Medical News*, the official newspaper of the "pro-choice" American Medical Association. The *AM News* reporter interviewed Dr. James McMahon-- who claims to have invented the method-- and Dr. Martin Haskell, who wrote a monograph explaining how to perform the procedure that was distributed by the National Abortion Federation in 1992. Their statements will be referred to repeatedly in this memo.

Dr. McMahon has circulated literature in which he refers to having performed a "series" of "more than 2,000" abortions by the partial-birth method (which he calls "intact dilation and evacuation").

(However, in the article by Karen Tumulty that appeared in the January 7, 1990 issue of *Los Angeles Times Magazine*, Dr. McMahon was quoted as saying, "Frankly, I don't think I was any good at all until I had done 3,000 or 4,000," referring to abortions "in later pregnancies." The article also reported that Dr. McMahon performs 400 "later abortions" a year. In literature he has circulated seeking abortion referrals, Dr. McMahon strongly advocates the partial-birth method for late abortions, so presumably most of his late abortions are being done using this method.)

As for Dr. Haskell, he said in his 1992 paper that he had performed "over 700" such abortions. His wife recently told an Ohio paper that he performs "less than 200" a year.

At least "a handful" of other doctors also use the procedure (*AM News*), but have not chosen to circulate papers or give interviews as have Drs. Haskell and McMahon.

Thus, the total number of partial-birth abortions performed is unknown, but certainly substantially exceeds the figure used in the *Los Angeles Times*.

How many *third-trimester* abortions are there? Nobody really knows. As *American Medical News* reported (July 5, 1993):

> Accurate figures on second- and third-trimester abortions are elusive because a number of states don't require doctors to report abortion statistics. *For example, one-third of all abortions are said to occur in California, but the state has no reporting requirements.* The Guttmacher Institute [an arm of Planned Parenthood] estimates there were nearly 168,000 second- and third-trimester abortions in 1988... with 10,660 at week 21 and beyond.
>
> There is a particular debate over the number of third-trimester abortions. Former Surgeon General C. Everett Koop, MD, estimated in 1984 that 4,000 are performed annually. The abortion federation [National Abortion Federation] puts the number at 300 to 500. *Dr. Haskell says that "probably Koop's numbers are more correct."*
> [Emphasis added]

MISINFORMATION: PARTIAL-BIRTH ABORTIONS ARE ONLY PERFORMED TO SAVE THE MOTHER'S LIFE OR ON FETUSES WHO CANNOT SURVIVE

MISINFORMATION: *Los Angeles Times*, June 16, 1995: "Typically, it is used in late pregnancies to save a mother's life or after the detection of severe fetal abnormalities."

MISINFORMATION: *The New York Times* (June 19, 1995): "[HR 1833 / S. 939 is] a bill to outlaw one of the rarest types of abortions-- a highly specialized procedure that is used in the latter stages of pregnancy to abort fetuses with severe abnormalities or no chance of surviving long after birth."

CRITIQUE: These two newspapers uncritically accepted claims made in a "factsheet" distributed by NARAL at the June 15 hearing. But these statements are inconsistent with the plain language of the bill and with public statements by the most visible practitioners of the partial-birth abortion procedure, Dr. James McMahon of Los Angeles and Dr. Martin Haskell of Dayton. *

In the 1993 *American Medical News* article cited above, neither Dr Haskell nor Dr. McMahon has said that they use the method only in such cases. On the contrary, as *AM News* reported:

> *Dr. Haskell said he performs abortions "up until about 25 weeks" gestation most of them elective. Dr. McMahon does abortions through all 40 weeks of of pregnancy, but said he won't do an elective procedure after 26 weeks. About 80% of those he does after 21 weeks are nonelective, he said.*

Thus, Dr. Haskell said that *most* of the partial-birth abortions that he performs are-- even by his own definition-- "elective." Dr. McMahon acknowledged that, even after 21 weeks, 20% of the partial-birth procedures he performs are-- even by his expansive standards-- "elective."

Dr. McMahon has also produced literature in which he explains some of the reasons that he regards as "*non*-elective," including "depression," "pediatric indications" (i.e., the mother's youth), and a wide variety of fetal or maternal health problems that are not life threatening.

After conducting interviews with Dr. McMahon, reporter Karen Tumulty wrote in the *Los Angeles Times Magazine* (January 7, 1990):

> If there is any other single factor that inflates the number of late abortions, it is youth. Often, teen-agers do not recognize the first signs of pregnancy. Just as frequently, they put off telling anyone as long as they can.

It is also noteworthy that when NRLC originally publicized the partial-birth abortion procedure in 1993, the then-executive director of the National Abortion Federation distributed a memorandum to the members of that organization which acknowledged that such abortions are performed for *many* reasons:

> "There are many reasons why women have late abortions: life endangerment, fetal indications, *lack of money or health insurance, social-psychological crises, lack of knowledge about human reproduction, etc.*" [emphasis added]

The June 12, 1995 letter from NAF to members of the House of Representatives noted that late abortions are sought by "very young teenagers...who have not recognized the signs of their pregnancies until too late," and by "women in poverty, who have tried desperately to act responsibly and to end an unplanned pregnancy in the early stages, only to face insurmountable financial barrier."

[At the June 15 Constitution Subcommittee hearing, Dr. Pamela Smith, director of medical education in the Department of Obstetrics and Gynecology program at Mt. Sinai Hospital in Chicago, testified that in a true life-endangering emergency, no physician would rely on this method, which must be performed across three days (including the two days of preparation).] In any event, the bill contains a life-of-mother exception.

MISINFORMATION: THE DRAWINGS ARE INACCURATE

MISINFORMATION: On June 12, the National Abortion Federation-- an association of abortion providers-- sent a letter to House members in which NAF claimed-- on the authority of Dr. J. Courtland Robinson of Johns Hopkins-- that the drawings of the partial-birth abortion procedure distributed by Congressman Canady in a letter to House members were "highly imaginative" and "misleading."

CRITIQUE: At the June 15 hearing before the House Judiciary Constitution Subcommittee, Dr. Robinson-- testifying on behalf of the National Abortion Federation-- retreated from this charge. Dr. Robinson agreed with Congressman Canady's statement that the drawings-- which were arrayed on posters next to the witness table-- were "technically accurate." Dr. Robinson also testified regarding the drawings:

> That is exactly probably what is occurring at the hands of the two physicians involved.

After interviewing partial-birth abortion method specialist Dr. Martin Haskell *American Medical News* reported:

> Dr. Haskell said the drawings were accurate "from a technical point of view." But he took issue with the implication that the fetuses were "aware and resisting."

Professor Watson Bowes of the University of North Carolina at Chapel Hill, who is an internationally recognized authority on fetal and maternal medicine, also reviewed Dr. Haskell's 1992 monograph on how to perform the procedure, and wrote that these drawings are "an accurate representation of the procedure described in the article by Dr. Haskell."

MISINFORMATION: THE BABIES ARE DEAD BEFORE THE PARTIAL DELIVERY IS PERFORMED

MISINFORMATION: The June 12 National Abortion Federation letter claims that "fetal demise is virtually always induced by the combination of steps taken to prepare for the abortion procedure."

CRITIQUE: In interviews with the *American Medical News*, Doctors Haskell and McMahon "told *AM News* that the majority of fetuses aborted this way are alive until the end of the procedure."

Dr. Haskell himself, in an interview published in the Dec 10, 1989 *Dayton News*, referred to the scissors thrust as the lethal act.

> "When I do the instrumentation on the skull... it destroys the brain sufficiently so that even if it (the fetus) falls out at that point, it's definitely not alive," Dr. Haskell said.

Dr. Watson Bowes of the University of North Carolina at Chapel Hill, professor of maternal and fetal medicine and co-editor of the *Obstetrical and Gynecological Survey*, reviewed Dr. Haskell's 1992 monograph and noted that Dr. Haskell quite explicitly contrasts the partial-birth procedure with other late-term abortion methods that *do* induce fetal death within the uterus. Professor Bowes concluded that the fetuses are indeed alive at the time that the procedure is performed.

MISINFORMATION: THE BABY DOESN'T FEEL PAIN DURING THE ABORTION

Dr. J. Courtland Robinson, the obstetrician who testified on behalf of the National Abortion Federation on June 15, insisted, "In no case is pain induced to the fetus. If neurological development at the stage of the abortion being

performed even made this possible, which in the vast majority of cases it does not, analgesia and anesthesia given to the woman neutralize any possibility of fetal pain." However, Dr. Robinson retreated substantially from this assertion under questioning from subcommittee members.

(Note: Dr. Haskell's 1992 paper explicitly states that he performs the procedure "under local anesthesia" and nitrous oxide, which would have no effect on the baby.)

Professor Robert White, Director of the Division of Neurosurgery and Brain Research Laboratory at Case Western Reserve School of Medicine, told the Constitution Subcommittee, "The fetus within this time frame of gestation, 20 weeks and beyond, is fully capable of experiencing pain." Dr. White analyzed the partial-birth procedure step-by-step and concluded, "Without doubt, this is a dreadfully painful experience for any infant subjected to such a surgical procedure." [Prof. White's testimony is available from NRLC upon request.]

DOES THE BILL VIOLATE SUPREME COURT PRECEDENTS?

In written testimony submitted to the House Judiciary Constitution Subcommittee, David Smolin, a professor at Cumberland Law School at Samford University, testified that he believed that the Partial-Birth Abortion Ban Act could be upheld even under the Supreme Court precedents that block most government limitations on abortion.

"The spectre of partially delivering a fetus, and then suctioning her brains, may mix the physician's disparate roles at childbirth and abortion in such a way as to particularly shock the conscience," he said. "It is possible that at least some of the fetuses killed by partial-birth abortions are constitutional persons. The Supreme Court held in *Roe v. Wade* that the word person, as used in the Fourteenth Amendment, does not include the unborn. The Court, however, has never addressed the constitutional status of those who are 'partially born.'" [Prof. Smolin's complete testimony is available on request.]

However, pro-abortion advocacy groups insist that the partial-birth abortion procedure is completely protected by *Roe v. Wade*. If this is true, it will be news to a lot of people, and is a powerful argument for re-examining *Roe v. Wade*.

WHAT SHOULD THIS PROCEDURE BE CALLED?

Dr. Martin Haskell, in his 1992 NAF paper on how to perform the procedure, wrote that he "coined the term dilation and extraction" or "D & X." However, that nomenclature is rejected by Dr. James McMahon of Los Angeles, who has claimed that he invented the method and has performed it thousands of times. Dr. McMahon refers to the method as "intact dilation and evacuation" and as "intrauterine cranial decompression." (Dr. Haskell's paper refers to Dr. McMahon's approach as "a conceptually similar technique.")

The bill creates a *legal definition* of "partial-birth abortion" that would ban any variation of the procedure-- no matter what new idiosyncratic name any abortionist invents for it-- if it is "an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery."

Thus, it is incorrect to report that the bill would "ban D & X" abortions, because the term "D & X" refers to only one doctor's "coined" phrase for a sub-class of the abortion procedures that would be banned by the bill.

In any event, is referring to the procedure as a "partial-delivery" or "partial-birth" accurate, or misleading? In his 1992 paper explaining how to perform the procedure, Dr. Martin Haskell wrote:

> With a lower [fetal] extremity in the vagina, the surgeon uses his fingers *to deliver* the opposite lower extremity, then the torso, the shoulders and the upper extremities. [emphasis added]

Dr. J. Courtland Robinson, testifying at the June 15 hearing Constitution Subcommittee on behalf of the National Abortion Federation, testified, "Never in my career have I heard a physician who provides abortions refer to any technique as a 'partial-birth abortion.'" But Dr. Robinson's objection seems a mere quibble, as he also testified:

> In our tradition we have other terms. I am surprised the word 'partial-extraction' was not used. This is a standard term in obstetrics that we use for delivering. That [term] could have been used.

Obstetrician Dr. Pamela Smith of Mt. Sinai Hospital in Chicago testified

> There is no uniformly accepted medical terminology for the method that is the subject of this legislation. Dr. McMahon does not even use the same term as Dr. Haskell, while the National Abortion Federation implausibly argues that there is nothing distinctive about this procedure. The term you have chosen, "partial-birth abortion," is straightforward.

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